

### **REMARKS**

Claims 1, 2, 5 and 6 have been rejected by the Examiner under 35 U.S.C. § 103(a) as being unpatentable over Pearce et al. (U.S. Patent Publication 2004/0247744 A1) filed on May 12, 2004, in view of Shaft et al. U.S. Patent 6,395,321 B1. This rejection is respectfully traversed.

As the Examiner will note claim 1, 2, 5 and 6 have been amended in an effort to further distinguish the present invention from the prior art by reciting that the preparation defined in the claims is a carbonated, crushed, mass-type vitamin preparation as distinguished from a "film" as recited in the prior art. Support for the modification made to the claims can be found in original step 7 and 8 of claim 1 of the present application, and accordingly, it is believed that these modifications to the claims should not raise a problem with respect to new issues in connection with the prosecution of the present application.

The present invention is directed to a carbonated crushed, mass-type vitamin preparation which consists of vitamins, sucrose, starch syrup (maltose syrup), sodium bicarbonate and carbon dioxide. The carbonated crushed, mass-type vitamin of the present application is manufactured by the following steps 1 to 8 as recited in claim 1 of the present application and as now recited in the present claim, the final form of the preparation has a constitution of a crushed mass and as such, bares no resemblance to a film. More specifically, the vitamin preparation of the present invention is in the form of a crushed mass, wherein the active ingredients, such as vitamins, sucrose syrup (maltose syrup), sodium bicarbonate and carbon dioxide are mixed as a whole. The crushed mass-type vitamin preparation of the present invention is not combined with any films.

The Pearce reference is directed to a orally edible soluble film that disintegrates quickly upon placement in the human mouth. Please see in this regard paragraph [0004] in column 1 as well as claim 1 of the prior art reference where it is recited that snacks for human consumption are provided with orally soluble edible films that disintegrates quickly upon placement in a human mouth without leaving substantial residue that can be felt by the human tongue or which

needs to be swallowed or ejected from the mouth. The orally soluble edible film of Pearce essentially contain a film-forming agent, such as pullulam, hydroxypropylmethyl cellulose, polyvinyl pyrrolidone, carboxymethyl cellulose, etc., (please see pages 1 and 2 and paragraphs [0005] to [0016] that is used to form the shape of the film. Also, Figures 1-4 show that the final form of the invention taught by Pearce is a film.

Furthermore, the Pearce reference teaches that the orally soluble edible film may include small bits of a gas-releasing agent (gasified candy). However, the gasified candy *per se* does not contain vitamins as essential elements. Rather the Pearce reference teaches that the bits of the gasified candy can be inserted into an encapsulated film made of the orally soluble edible film (see pages 6 and 7 paragraph [0071]). Thus, for example, bits of the gasified candy can be coated on the film (see Figure 13), or put between layers of the orally soluble edible film (see Figure 14). Accordingly, it can be concluded that the Pearce reference teaches an orally soluble edible film that contains a film-forming agent as an essential element and is further characterized by bits of gasified candy which are coated on the surface of the film or put between layers of the film. In contradistinction thereto the present invention does not include a film-forming agent and is not in the shape of the film, but rather the present invention is directed to the overall constitution of a crushed, mass-type vitamin preparation which is clearly different from the film of the primary reference. The carbonated crushed, mass-type vitamin of the present invention is not combined with any film and in fact, has no relationship with respect to the use of a film and thus is believed that the Pearce reference fails to recognize or appreciate the Applicant's inventive contribution.

The Shaft reference is cited by the Examiner to teach the packaging and enclosing of food items such as candy in a hermetic package. However, as noted in the Shaft reference, the food packages enclosed therein relies upon the heat of the food item to activate a film sealant. Since heat is required to affect the sealing of the package, it is believed that such a package could not be used in the present invention since the crushed, mass-type vitamin preparation is actually cooled in step 5 of claim 1 and thus there would be no heat available to seal the package as suggested in the Shaft reference. Thus, even if it were possible to combine the references

suggested by the Examiner, since the Shaft patent requires the use of heat to achieve hermetic sealing of the package and since the present invention does not provide a heat environment, using the food package of the Shaft patent would not be affective in achieving a hermetic sealing of the vitamin that is containing oral soluble films of the Pearce reference.

Furthermore it is believed that the Examiner has not established a *prima facie* case of obviousness for the following reason. In referring to the Pearce reference, it is noted that the filing date of the prior art reference is May 12, 2004, however, the Pearce publication springs from a parent continuation-in-part application having a filing date of December 20, 2002. In view of the fact the Pearce reference extends from a parent continuation-in-part application (now abandoned) which may not provide the same disclosure as the present Pearce publication, it is not clear that the Examiner can rely upon the filing date of December 20, 2002, of the continuation-in-part application as an affective date relative to the priority date of the present application which is May 30, 2003. If, in fact, the subject matter of the Pearce reference is not supported by the disclosure in its parent continuation-in-part application, with respect to the subject matter of the claimed the invention, then the Pearce reference having a filing date of May 12, 2004 would not be an effective reference against the claims of the present invention having a priority application date of May 30, 2003. Since the Examiner has ready access to the parent continuation and part application of the Pearce reference which is now abandoned, the Applicant respectfully request the Examiner to confirm that the abandoned parent continuation-in-art application provides sufficient support for the subject matter present in the Pearce publication.

Accordingly, in view of the above remarks reconsideration of the rejection and allowance of all of the claims of the present application are respectfully requested.

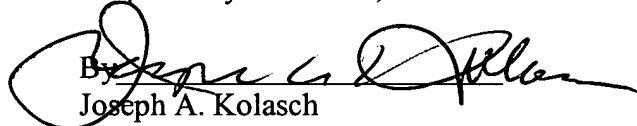
In the event that the proposed amendment does not place the present application in condition for allowance, entry thereof is respectfully requested as placed in the present application in better condition for appeal.

Should there be any outstanding matters that need to be resolved in the present application; the Examiner is respectfully requested to contact Joseph As. Kolasch. Reg. No. 22.462 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.147; particularly, extension of time fees.

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Respectfully submitted,

By 

Joseph A. Kolasch

Registration No.: 22,463

BIRCH, STEWART, KOLASCH & BIRCH, LLP

8110 Gatehouse Road

Suite 100 East

P.O. Box 747

Falls Church, Virginia 22040-0747

(703) 205-8000

Attorney for Applicant